

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF ARKANSAS
3 FAYETTEVILLE DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 VS.

7 CHANTHALANGSY PENG,

8 Defendant.

CASE NO. 5:17-CR-50027

9 TRANSCRIPT OF SENTENCING HEARING
10 BEFORE THE HONORABLE TIMOTHY L. BROOKS
11 January 12, 2018; 1:31 p.m.
12 FAYETTEVILLE, ARKANSAS

13 FOR THE GOVERNMENT:

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Proceedings recorded in realtime via machine shorthand.

Dana Hayden, CCR, RMR, CRR
Federal Official Court Reporter
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1 THE COURT: The next matter on the Court's
2 docket today is the case of the United States versus
3 Peng Chanthalangsy. Our case number is 5:17-CR-50027,
4 defendant number 1. Dustin Roberts is here on behalf of
01:31PM 5 the United States, Ken Osborne is here representing
6 Mr. Chanthalangsy, and Diem Nguyen is here from U.S.
7 probation. She performed the presentence investigation
8 in this case.

9 Good afternoon, Mr. Chanthalangsy.

01:31PM 10 THE DEFENDANT: Good afternoon.

11 THE COURT: Sir, do you know and understand
12 that the purpose of our hearing today is to allow the
13 Court to impose its sentence upon you as a result of
14 your guilty plea in this case and resulting conviction?

01:32PM 15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: In the last 24 hours, have you
17 consumed any medications, drugs, or any other substance
18 that would impair your ability to understand what's
19 going on in the courtroom today?

01:32PM 20 THE DEFENDANT: No.

21 THE COURT: Now, Mr. Osborne has been your
22 attorney for at least some period of time in this case;
23 is that correct?

24 THE DEFENDANT: Yes.

01:32PM 25 THE COURT: Are you fully satisfied with all of

1 Mr. Osborn e's legal services and representation of you
2 in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: All right, sir. Well, let's begin

01:32PM

5 our hearing with a brief review of the procedural
6 history of your case. You were originally indicted back
7 on April 18th of last year. That indictment charged you
8 with multiple counts relating in some fashion to the
9 distribution of controlled substances. There was also a

01:33PM

10 count, Count Five, that charged you with possession of
11 child pornography, and there was also a forfeiture
12 provision.

13 You then appeared back before this Court on
14 August 1st of last year, and at that time you entered a
01:33PM 15 plea of guilty to Count Five, which was the possession
16 of child pornography. You also consented to forfeiture.
17 Now, I accepted your guilty plea at that point, but I
18 deferred approval of your plea agreement until I had the
19 opportunity to be informed by the results of the
01:33PM 20 presentence investigation.

21 So since you were here last in August, that is
22 the process we have been going through. Officer Nguyen
23 conducted that investigation. She reported her initial
24 findings to the attorneys and to the Court on October
01:34PM 25 2nd, in response to which the government indicated they

1 had no objections to the initial presentence report.

2 Your attorneys, on the other hand, lodged
3 twelve separate objections to the presentence report.

4 Officer Nguyen reviewed those objections but then
01:34PM 5 finalized her presentence report, and the finalized
6 version was filed on October 30th.

7 On that same date, Officer Nguyen filed a
8 document that we call the addendum to the presentence
9 report, and the addendum is where Officer Nguyen

01:35PM 10 explained why certain objections were being resolved and
11 why certain other objections were not being resolved. I
12 believe there was even perhaps later a second addendum.

13 In any event, our rules require, sir, that when
14 dealing with these presentence reports, your attorney is
01:35PM 15 obligated to meet with you, to share the contents of the
16 presentence report with you, to explain the contents of
17 those documents to you, and to make sure that any
18 questions you may have about the presentence reports or
19 the addendums have been answered.

01:35PM 20 Let me ask you whether Mr. Osborne has done
21 that with you in this case. Has he?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Mr. Osborne, can you
24 please confirm for the record that you've received the
01:35PM 25 initial and final presentence reports, as well as the

1 addendums, and that you have reviewed those with
2 Mr. Chanthalangsy and that you've answered any and all
3 questions that he may have had?

4 MR. OSBORNE: I have, your Honor.

01:36PM

5 THE COURT: All right. Since the presentence
6 report was finalized, the Court has received numerous
7 documents that it has reviewed in preparation for this
8 hearing. I'm going to list these other items to make
9 sure to make sure that I reviewed everything that has
10 been submitted.

01:36PM

11 First of all, the government submitted a
12 sentencing memorandum, which the Court has reviewed.
13 Mr. Osborne, on behalf of Mr. Chanthalangsy, has also
14 submitted a sentencing memorandum, which the Court has
15 reviewed. There have also been numerous letters of
16 support that have been submitted on behalf of
17 Mr. Chanthalangsy.

01:36PM

18 Mr. Chanthalangsy has lots of siblings and a
19 big family, and the Court feels like it's heard from
20 many of them, which, it sees that there are quite a few
21 in the audience today and so I certainly appreciate the
22 opportunity to have read and learned more about
23 Mr. Chanthalangsy from those letters.

01:37PM

24 The Court has also received numerous victim
25 impact statements and letters from the child victims of

01:37PM

1 pornography, including some from the series that have
2 been part of the relevant conduct here, 40 pages or so
3 worth of victim impact statements and letters.

4 The Court has also received e-mail
01:37PM 5 communications from the attorneys to the effect that the
6 restitution -- victim restitution claims that have been
7 submitted in this case, that the parties have conferred
8 and have mutually agreed that an appropriate amount of
9 restitution for the seven victims that have made
01:38PM 10 requests for restitution would be in the sum of \$1,000
11 per those seven victims, for a total of \$7,000.

12 I believe that that itemizes all of the
13 materials that I have reviewed. Mr. Roberts, are you
14 aware of anything that I've left out?

01:38PM 15 MR. ROBERTS: No, your Honor, that's it.

16 THE COURT: Mr. Osborne, are you aware?

17 MR. OSBORNE: No, your Honor.

18 THE COURT: All right. In looking at Officer

19 Nguyen's addendums, it looks like there were several

01:39PM 20 unresolved objections, Objection Number 3, 4, 5, 6, 8,

21 9. I may have left out one; but in any event, my

22 understanding is that given where we are at this point

23 and what Mr. Osborne has had a chance to review that the

24 defendant would now like to withdraw all of the

01:39PM 25 remaining unresolved objections; is that correct?

1 MR. OSBORNE: That's correct, your Honor.

2 THE COURT: So just to be sure I understand,
3 there are no objections that you believe the Court needs
4 to rule on at this time?

01:39PM

5 MR. OSBORNE: That is correct, your Honor.

6 THE COURT: All right. That being the case,
7 the Court will adopt and approve the final presentence
8 report without revision.

01:40PM

9 Now having finalized the presentence report,
10 and having had the benefit of the contents of that
11 report, Mr. Chanthalangsy, I am now in a position to
12 give full and final approval to your plea agreement in
13 this case. I do so based on a finding that the offense
14 of conviction here will adequately reflect the actual
15 seriousness of your conduct and behavior.

01:40PM

16 So bottom line, what that means is that the
17 sentence that the Court will impose at the end of this
18 hearing will be consistent with the plea agreement that
19 you and your attorney negotiated with the government.

01:40PM

20 So what I would like to cover from hereon out
21 would be as follows, sir. First, I would like to
22 explain to you the various factors that the Court has
23 taken into consideration in determining what would be an
24 appropriate sentence for you in this case; then I am
25 going to ask the attorneys whether they have any

01:41PM

1 recommendations or argument as to what they contend
2 would be an appropriate sentence, given the relevant
3 factors; and then, before stating its sentence and the
4 reasons for it, I will give you an opportunity to make
5 any statement that you would like to make to the Court.
6 You're not obligated to make a statement, but I will
7 certainly give you that opportunity.

8 So with that said, let me explain how the
9 Court -- the process that it has used to evaluate what
10 would be an appropriate sentence. As always is the
11 case, it is a two-step process. In step one, the Court
12 is obligated to apply the sentencing -- federal
13 sentencing guidelines to your case. That results in the
14 calculation of what we call the guideline range
15 sentence, which simply means the sentence that, if you
16 crunch the numbers, in the view of the United States
17 Sentencing Commission, that range of punishment would be
18 appropriate for you.

19 Now, that range is merely advisory. This Court
20 is not obligated or bound to sentence you to a so-called
21 guideline range sentence, but it must take the guideline
22 range into consideration.

23 So after calculating that range, we move to
24 step two. Step two involves a consideration of numerous
25 other factors. These factors are set out at a place in

1 our code book known as Title 18 United States Code
2 Section 3553(a). That is simply the chapter and verse,
3 so to speak, of where we find these factors in our
4 statute book; but because of that, these factors
5 sometimes are nicknamed or, for short, referred to as
6 the "3553(a) factors."

7 Now, I will explain more to you about what
8 those factors are when we get to step two; but just so
9 that you understand the process, the idea is that we
10 calculate the guideline range and then the Court
11 considers, applies, and weighs other factors to
12 determine whether a sentence within the guideline range
13 is appropriate or not.

14 If, applying these other factors, the Court
15 believes that the guideline range is too harsh, then, as
16 your attorney is advocating for here, the Court has the
17 discretion to vary downward from the guideline range.

18 The opposite, however, is also true, that the
19 government's lawyer is advocating for. If the Court
20 were to determine that these other factors support
21 varying upward from the guideline range, because the
22 guideline range would be deemed to be not severe enough,
23 then the Court has that discretion as well, at least up
24 to the statutory maximum in this case. So that's how it
25 works, and let's begin at step one.

1 The guideline range, as you know, sir, is
2 actually calculated in quite a bit of detail within the
3 final presentence report, and for that reason I'm
4 technically just going to adopt and incorporate that
01:45PM 5 calculation by reference, but I do at least want to
6 summarize it for you.

7 To calculate the guideline range, the Court
8 needs to know two things. The first one is what we call
9 the offense level, and the second thing is your criminal
01:45PM 10 history category.

11 With regard to the offense level, possession of
12 child pornography offenses have a starting point on the
13 offense level of 18; and then the applicable guideline
14 lists numerous potential enhancements that could apply
01:46PM 15 if certain things are present in how the offense was
16 committed, and it is not uncommon that many of those
17 enhancements apply, and here there are several.

18 First of all, you've been assessed a two-level
19 enhancement because the images of the child pornography
01:46PM 20 included images of children who had not yet attained the
21 age of 12. There is a four-level enhancement that has
22 been applied as well because the images contained
23 conduct that was of a sadistic or masochistic nature.

24 You've also, merely because you were using a
01:47PM 25 computer to access these images, that fact alone is

1 another two-level enhancement; and as pertinent here,
2 you've also been assessed with an enhancement based on
3 the number of images that were attained based on the
4 forensic examination of the devices involved.

01:47PM

5 According to the presentence report, there were
6 over 38,000 images using the calculation protocol that
7 is used and so the idea is that the more images, the
8 more enhancement, and the maximum enhancement is five.
9 That is triggered when there are 600. You have

01:47PM

10 obviously many, many more times than that, so you
11 qualify for the maximum enhancement of five levels. If
12 we do the math, that gets you up to 31 so far.

01:48PM

13 Other chapters of the guidelines provide for
14 downward adjustments, and here the probation officer is
15 recommending that you receive a two-level downward
16 adjustment because of your acceptance of responsibility;
17 and pursuant to what is contemplated in your plea
18 agreement, and if the government so moves, you can
19 receive a third level.

01:48PM

20 Mr. Roberts?

21 MR. ROBERTS: The government so moves, your
22 Honor.

01:48PM

23 THE COURT: That motion is granted and so you
24 will, in fact, receive a total of three levels of
25 downward adjustment because of your acceptance of

1 responsibility. So, again, doing the math, we're at a
2 28 on the offense level.

3 So we go to the second input, which is your
4 criminal history category. That is all determined based
01:48PM 5 on your prior convictions and how many points that they
6 score. That's an easy calculation in your case because
7 your criminal history scores zero points and so you are
8 placed in the lowest criminal history category.

9 So now that we know that you're an offense
01:49PM 10 level 28 and your criminal history category is a I, if
11 you think of the guideline range as a table, then we're
12 simply finding the intersection of those two inputs; and
13 at the intersection here, I can tell you that the
14 recommended, or what we say advisory range is as

01:49PM 15 follows: To a period of incarceration of between 78 and
16 97 months with a term of supervised release to follow
17 which would range in length from five years and up to
18 the remainder of your life. A fine is recommended to be
19 imposed in the range of \$25,000 and up to as much as
01:50PM 20 \$250,000. There has been a claim of restitution
21 totaling, I believe, \$72,500. The guideline would
22 provide for mandatory restitution in an amount that the
23 Court finds to be appropriate.

24 There's also a special assessment that applies
01:50PM 25 in every kind of case for \$100 and then there is another

1 quote/unquote mandatory special assessment that the
2 Court must impose in the sum of \$5,000 in cases --
3 sexual cases involving children, and the only exception
4 to that is if the Court were to find that you're
01:50PM 5 indigent. So that is the guideline range. That is step
6 one.

7 We now move to step two. These 3553(a) factors
8 that I alluded to a moment ago requires this Court,
9 first of all, to look at the totality of the
01:51PM 10 circumstances that surround your offense of conviction.
11 The Court must also -- and this is one of the reasons
12 why all these letters that have been submitted are so
13 important. The Court must take into account your
14 personal history, your background and your
01:51PM 15 characteristics.

16 The Court is also instructed to look to these
17 sentences that have been imposed upon other defendants
18 who have been convicted of the same or substantially
19 similar offense and who have the same or substantially
01:51PM 20 similar criminal history. The idea there is that the
21 Court should avoid any unwarranted differences in the
22 sentences that are imposed upon otherwise similar
23 defendants.

24 Finally, the Court is required to bear in mind
01:52PM 25 all of the purposes and objectives for why we punish

1 people convicted of federal offenses in the first place.
2 Here the idea is that the Court should craft and
3 custom-tailor a sentence for each defendant that comes
4 before it that is sufficient, but not greater than
01:52PM 5 necessary, to meet and achieve those goals and purposes.

6 Congress has said that in this custom-tailoring
7 approach that the final sentence that the Court comes up
8 with should reflect several things. For example, a
9 sentence should reflect the seriousness of the offense,
01:53PM 10 a sentence should reflect and be in keeping with
11 imposing proper respect for the law, a sentence should
12 be just, a sentence should have a deterrent effect, and
13 a sentence should serve to protect the public from you
14 and any future crimes which you might otherwise commit.

01:53PM 15 So in looking at all of the materials that have
16 been submitted to the Court and which the Court has
17 reviewed, I have been mindful of those purposes of
18 sentencing alongside these other 3553(a) factors that I
19 have mentioned; and as I continue to keep an open mind
01:54PM 20 as to what would be the most appropriate sentence, I'm
21 now going to ask that the attorneys, understanding that
22 those are the factors that we have to look to, I'm going
23 to ask whether they have any particular recommendations
24 or argument they would like to make.

01:54PM 25 And, Mr. Roberts, I'll ask you to go first.

1 MR. ROBERTS: Thank your Honor.

2 Your Honor, the government filed a motion for
3 an upward variance in this case asking for a sentence of
4 120 months. I set out the reasons pretty, I think,
01:54PM 5 clearly in the sentencing memo, the punch line being
6 that this case should set a bar.

7 The offense conduct, although it is somewhat
8 sophisticated, we could argue where in the range that
9 should be. The child pornography does depict minors.

01:54PM 10 We could argue where in the range that should be.

11 What truly stands out about this case, and I
12 just won't belabor the point -- it's quite obvious --
13 this defendant's a drug dealer. We have, to my
14 knowledge, never had a case, at least that I presented,
01:55PM 15 or that I know about that's been presented, in which a
16 child pornography, run-of-the-mill -- or not
17 run-of-the-mill but, rather, online-based child
18 pornography, nonhands-on, no criminal history, was also
19 a drug dealer.

01:55PM 20 Because of that factor alone, I think this case
21 should set the bar. There are aggravating factors
22 outside any case such as this that we presented. The
23 case by itself on child pornography is arguably
24 comparable. It's not substantially different than any
01:55PM 25 other online CP case that we present. The only factor

1 here is that Mr. Chanthalangsy is a drug dealer.

2 That's all I have, your Honor.

3 THE COURT: All right. I did have one question
4 for you. At one place in the presentence report, it
01:55PM 5 describes the images portraying victims ranging in age
6 from 1 to age 16 but then there are descriptions of
7 specific images that are all under, like, age 9. Do you
8 have any more information available to you as to where
9 the focus or any predominant age group that was depicted
01:56PM 10 overall?

11 MR. ROBERTS: Where the average fell? No, your
12 Honor. I wish I could represent that to the Court, but
13 off the top of my head, I do not. I would note that
14 there is a baby, an infant's chat room, that we did find
01:56PM 15 and that was something that stood out to me. But as far
16 as where the average age is, I don't have that to report
17 to the Court.

18 THE COURT: So in other words, there are
19 several that are specifically identified -- as I said, I
01:56PM 20 think they are maybe 7 to 9 years old, something like
21 that. Are those representative, or do these images
22 truly run from 1 all the way up to 16?

23 MR. ROBERTS: Your Honor, when -- those
24 descriptions primarily come from when we're indicting
01:57PM 25 the case and we're looking at our charging decisions and

1 what we're going to present. I don't necessarily ask
2 the forensic examiner to get the worst of the worst, but
3 we are looking for prepubescent minor -- or images
4 depicting prepubescent minors and that's why all of
01:57PM 5 those are described -- do describe prepubescent minors.

6 THE COURT: All right. Thank you, sir.

7 Mr. Osborne?

8 MR. OSBORNE: Your Honor, this particular case,
9 as Mr. Roberts has suggested, does have a very unusual
01:57PM 10 twist with regard to the drugs that are involved. This
11 starts out with a five-count indictment. The first four
12 counts deal with drugs; the last count deals with the
13 possession of child pornography.

14 I would suggest to the Court, I'm going to
01:57PM 15 address first the child pornography issue and then try
16 to incorporate the drug analysis on the end.

17 Your Honor, with regard to the -- if this were
18 a standard child pornography case, it's my intention
19 that the Court would normally look at a Dorvee analysis
01:58PM 20 to some extent; and when you're looking at the Dorvee
21 analysis with respect to the presentence investigation
22 report, Paragraphs 43, 44, and 45, which give you a
23 combined enhancement of eight points, are normally
24 applicable in every single case.

01:58PM 25 I would concede in this particular case that

1 the number of images, which is 38,000, probably does
2 justify and probably -- I would suggest to the Court
3 that I could clearly understand why that particular
4 five-point enhancement might occur. But under the
01:58PM 5 Dorvee analysis, the other three enhancements, which
6 increase the sentence by an additional eight points has
7 been under extreme criticism because it's based on the
8 congressional mandates, not based on empirical evidence
9 that the sentencing commission would use to try to
01:59PM 10 determine what is appropriate.

11 So under that analysis, your Honor, when I
12 requested the sentence at 33 months, that is looking at
13 the pornography case standing by its own; and then if
14 you knock down the eight points without adding the
01:59PM 15 additional -- excuse me -- which would include the
16 additional five, that would get him to a Level 20, which
17 would be 33 to 41 months. That's where I was suggesting
18 the Court should look at this case.

19 I understand that this one -- and I've spoken
01:59PM 20 with Dustin too. I've never seen these kind of facts
21 before, either. So I can't tell the Court necessarily
22 how the Court should look at this or view this, but I
23 was trying to view this from the standpoint, what if all
24 five counts had been drug counts as opposed to four
02:00PM 25 counts of drugs and one count of child pornography.

1 I would submit to the Court that if the Court
2 was analyzing those particular facts, it would be
3 completely appropriate to look at the dismissed counts
4 when analyzing a range where to put this man with regard
02:00PM 5 to the range, but you normally wouldn't go outside of
6 that range based on those dismissed counts. So --

7 THE COURT: How would -- if the government --
8 if you and the government had presented a plea agreement
9 to the Court where you also pled to one of the drug
02:00PM 10 counts, how would that have impacted the resulting
11 guideline range? Have you looked into that?

12 MR. OSBORNE: I have not, your Honor. That was
13 done before I got on board, so --

14 THE COURT: I mean, it would obviously affect
02:00PM 15 the upper end of the statutory maximum --

16 MR. OSBORNE: Right.

17 THE COURT: -- but it doesn't necessarily mean
18 that it would impact the guideline range.

19 MR. OSBORNE: I don't think it would -- well, I
02:01PM 20 don't know if Diem would have any input, but I don't
21 believe that --

22 THE COURT: Well, I was just curious whether
23 you had -- you were making that argument, so I was just
24 curious whether you had done that.

02:01PM 25 MR. OSBORNE: Yeah, I did not.

1 THE COURT: Okay.

2 MR. OSBORNE: Your Honor, these guidelines
3 completely ignore the technological advances, and that's
4 part of the Dorvee analysis that suggests that you can
02:01PM 5 have a computer in every case.

6 As the Court has already mentioned, there's
7 going to be a computer in almost every case. These are
8 not Polaroid. We have a kind of a Polaroid guideline --
9 well, excuse me, Polaroid congressional mandates, and
02:01PM 10 they ignore the technological advances.

11 The only -- once again, the only one that I
12 would suggest, it seems to be that somewhere around 2500
13 images may somewhat be a threshold to allow the
14 five-point enhancement; it clearly exceeds that.

02:02PM 15 Judge, I would ask the Court to consider it
16 under that analysis and allow it to be analyzed on the
17 count that he's pleading to with the reduction of these
18 point enhancements that the Court, I believe, would
19 normally deem inappropriate without the regard of the
02:02PM 20 congressional mandates.

21 Your Honor, with regard to the restitution, I
22 would ask the Court to allow that restitution figure for
23 the 7,000; and on behalf of my client, your Honor, he
24 has asked me to request that he be allowed to be
02:02PM 25 incarcerated in an SOMP facility which would offer the

1 SOTP program as well. He has indicated to me he does
2 have a desire to change. This is not like him. This is
3 totally out of his character.

02:03PM 4 I would suggest to the Court, it's my
5 understanding the Court's received nine letters from
6 Hongkham, Vieng, Kim, Bounmee, Phet, Dora, Jason, and
7 Brittany; and the thing that I get out of all those
8 letters, your Honor, is that it surprised all of them.
9 They all said this is totally out of this man's
02:03PM 10 character. They never saw anything like this coming,
11 and I would ask the Court to consider that when imposing
12 a sentence.

13 It's my suggestion to the Court when you have a
14 family support network that stands behind a person, his
02:03PM 15 likelihood of success when he gets out is going to be
16 completely different than somebody that doesn't have a
17 support network.

18 With regard to the fine, your Honor, I would
19 ask that it just be eliminated on the restitution.
02:03PM 20 Thank your Honor.

21 THE COURT: All right. Thank you very much,
22 Mr. Osborne.

23 Well, Mr. Chanthalangsy, would you like to make
24 a statement?

02:04PM 25 THE DEFENDANT: No, I do not.

1 THE COURT: All right. Thank you, sir.

2 Well, sir, as I explained earlier, it is a
3 two-step process. We end step one with a guideline
4 range of 78 to 97 months and then the Court is obligated
5 to consider these other factors under Section 3553(a).

02:04PM

6 In nonhands-on child pornography cases, I
7 always begin the 3553(a) analysis by explaining the
8 Court's views about the 2G2.2 guideline. As this Court
9 has expressed on numerous occasions, this Court has a
10 policy disagreement with Section 2G2 for many of the
11 reasons expressed by Mr. Osborne. The fact that these
12 enhancements are not empirically based but
13 congressionally mandated I think is, if not conclusively
14 established, is certainly often a cited criticism.

02:05PM

15 The Court also has a fundamental problem in
16 that with the passage of time and with the evolution of
17 technology, the enhancements have become outdated and
18 they tend to be applied in every case -- or many of them
19 tend to be applied in every case, just because of the
20 nature of the technology and the nature of the offense.

02:05PM

02:06PM

21 The Government prosecutes child pornography,
22 and the fact that there's another enhancement because
23 children are 12 years old, I mean, that seems to be
24 present in almost every case, and it is to the point
25 where the guideline no longer serves, nor is it capable

02:06PM

1 of being applied, to separate the garden variety or
2 vanilla-flavored offenses from the more serious or
3 aggravating ways in which the crime can be committed.
4 So that's why I have a policy disagreement with Section
02:07PM 5 2G2.2.

6 The bottom line is I think that many times, if
7 not almost every time, it leads to a guideline range at
8 the end of what I call step one that is artificially
9 inflated such that when the Court begins to apply its
02:07PM 10 3553(a) analysis, it's starting that from a point that
11 is much higher than it should be.

12 So the sentencing commission, back in 2012 --
13 and I believe Mr. Osborne referred to this study in his
14 sentencing memorandum -- enveloped these same criticisms
02:07PM 15 and made a proposal for a different rubric with which to
16 assess truly aggravating versus typical offense conduct
17 in these cases and so I have -- while that rubric
18 requires the Court -- or would suggest that a Court
19 should look at the circumstances that characterize the
02:08PM 20 offense based on three things.

21 First of all, the Court would look at the
22 content of the images, the Court would make findings
23 about whether there was involvement in an Internet-type
24 community where there was participation alongside other
02:08PM 25 offenders, and then the Court is to look to whether

1 there's any underlying history that's predatory in
2 nature or sexually abusive in their past.

3 And so I have applied that framework to the
4 facts of this case, and my purpose in doing so is to try
02:09PM 5 to determine whether in this case the guideline range
6 enhancements overstate the seriousness of the particular
7 attributes in this case.

8 So as to content, there's a lot of content
9 here. 488 videos, 1600 still images. You do the math.
02:09PM 10 Total images is over 38,000. So the Court finds that
11 very aggravating, and I think Mr. Osborne rightfully
12 concedes that that is an aggravating circumstance.

13 Also, Application Note 6(b)(ii) explains why,
14 when there are videos in an offender's collection that
02:10PM 15 are particularly long, why that is kind of a tip-off as
16 to something that might be more aggravating than not.
17 The kind of line that they use is five minutes in
18 length, and there was at least one, perhaps two videos
19 noted here to be longer than five minutes. One was
02:10PM 20 longer -- as long as about 45 minutes, if I'm recalling
21 correctly. So that's viewed as very aggravating as
22 well.

23 Types of conduct depicted, while true that most
24 of the time it involved sadistic and masochistic, and by
02:10PM 25 that I mean penetration between an adult and a child,

1 it's not always the case, but it certainly was the case
2 here, so I would designate that as typical but certainly
3 not mitigating.

02:11PM 4 In terms of the ages, I think the general idea
5 is that if the collection involves children who are on
6 the younger end, if they're -- as opposed to closer to
7 16 that it's viewed as more aggravating the younger the
8 child victim.

02:11PM 9 In this case it appears to have run the gamut
10 between 1 and 16 years old, although there are certainly
11 representative samples involving children who are under
12 9 years of age, or approximately 9 years of age, and
13 that is certainly viewed as more aggravating than
14 typical.

02:12PM 15 There's no particular evidence that the
16 collection was organized per se, so that's viewed as a
17 little bit mitigating. The defendant maintained this
18 collection for approximately three years. I'd find that
19 to be typical.

02:12PM 20 As I will explain in a moment, the collection
21 was accessed through or perhaps protected by special
22 online protections and password technologies. That's
23 viewed as a little bit more aggravating and
24 sophisticated. So on balance, the content in this
02:12PM 25 particular case is certainly viewed more aggravating

1 than typical.

2 Item number two, participation in an Internet
3 community. This Court frequently, but not in every
4 case, sees what we call peer-to-peer sharing networks
02:13PM 5 where that is the offender's source of pornography.
6 This involves passive distribution, and it involves an
7 open community. That is viewed as more aggravating than
8 people who are not hooked up in a peer-to-peer format.

9 But the next step above that is whenever an
02:13PM 10 offender participates in a closed Internet community;
11 and what I mean by closed is that it's either
12 password-protected or you have to pay for access to the
13 images, and that was the case here.

14 Here Mr. Chanthalangsy was accessing this
02:13PM 15 pornography, at least in part, in what is known as the
16 dark web. He was paying for access to images through
17 Bitcoin virtual currency. The viewing was
18 password-protected and restricted.

19 It also involved access to chat rooms, where
02:14PM 20 other offenders lurked and posted content and presumably
21 had discussions. And in these online forums such as he
22 was accessing, now, those are categorized; and whatever
23 one's perverted mind may desire to see, there's likely
24 to be a category for those sorts of interests or
02:15PM 25 fetishes.

1 The Court had an opportunity in another case,
2 United States versus Jean, in which there was a lengthy
3 opinion that informed the Court's knowledge about the
4 dark web and its uses and about how you go to these
02:15PM 5 different pages on these sites by category based on what
6 the fetish is.

7 The Court finds -- bottom line, the Court finds
8 the defendant's use of the dark web and Bitcoin to pay
9 for access to be very aggravating; but beyond that,
02:15PM 10 according to the presentence report, one of the
11 interested websites that Mr. Chanthalangsy had visited
12 involved child pornography that was dedicated to infants
13 and to babies, and the Court finds that particularly
14 sick.

02:16PM 15 The third category is the defendant's prior
16 history of abusive relationships. The Court is not
17 aware of any such prior history and so it finds that
18 third category to be mitigating.

19 So the first thing, the content, that is more
02:16PM 20 aggravating than typical, I would say substantially so,
21 for the reasons that I have said. The second thing is
22 was the participation in the Internet community. The
23 answer is yes; and for the reasons that I have stated,
24 the facts here would suggest that the participation on
02:17PM 25 these facts is viewed as particularly aggravating. And

1 then we have the third factor, which, there's no prior
2 abuse, and that is viewed as mitigating.

3 When you average all that out and weigh it out,
4 and compare that to the enhancements that have been
02:17PM 5 applied, if you take the 2G2.2 approach, the Court finds
6 that the total number of enhancements that the guideline
7 comes up with is certainly a fair characterization of
8 the enhancements that should apply over the baseline, or
9 typical sort of cases that we see, if not more.

02:17PM 10 So this may be the very first case where the
11 Court has not found a reason to grant a variance when it
12 compares the proposed rubric for looking at these cases
13 with the 2G2.2 analysis, but nevertheless, those are the
14 Court's findings.

02:18PM 15 So now let's look at some of the more
16 traditional and straightforward factors under 3553(a).
17 There are both additional aggravating factors, as well
18 as numerous mitigating factors. First, sticking with
19 the child pornography, again, the Court here has

02:18PM 20 somewhat of a concern that the 2G2.2 analysis may very
21 well understate the seriousness of the offense conduct
22 here for the reasons that I have described, particularly
23 those reasons associated with the use of the dark web to
24 access these images and pay for it with Bitcoin currency
02:19PM 25 and that sort of thing.

1 But the circumstances that surround the offense
2 of conviction here also include drug distribution. In
3 fact, the origin of the criminal investigation here
4 started out as an investigation into drug trafficking.

02:19PM

5 It seems that apparently unbeknownst to his family,
6 Mr. Chanthalangsy was a criminal on the dark web and
7 that his -- one of his main fortes was in acquiring
8 drugs and perhaps even selling drugs over the dark web.

02:20PM

9 We also know for sure that there were at least
10 two deliveries of methamphetamine that were made and
11 numerous illicit contraband drugs during the seizure at
12 his house, upon execution of the search warrant.

02:20PM

13 He was a drug dealer, and whether or not he
14 pled to that, whether or not that is an offense of
15 conviction, it is relevant conduct and it is part of the
16 circumstances that surround the offense of conviction;
17 and the Court views those circumstances, even though he
18 was not convicted of them, to be a very aggravating
19 fact.

02:21PM

20 Turning to the mitigating factors, there are
21 numerous mitigating factors. I think the one that the
22 Court gives considerable weight to is the fact that
23 Mr. Chanthalangsy is a first-time offender. He has zero
24 criminal history points. And, where appropriate, the
25 Court believes that people with no prior criminal

02:21PM

1 history are deserving of a break and a second chance and
2 so that fact alone is entitled to significant weight in
3 a mitigating fashion.

02:21PM 4 As Mr. Osborne pointed out, the Court also
5 finds, and based on the letters that it has received,
6 that Mr. Chanthalangsy, beside for his criminal
7 activities committed in the dark, when he's out in the
8 daylight and around his family and his friends and at
9 his job, he's a very well-liked, respected person who
02:22PM 10 certainly is capable of being a productive member of
11 society. He's certainly someone that is very well-loved
12 by his family. He has lots of family support.

13 I agree with Mr. Osborne that all of that
14 should be combined, and we have to bear in mind that
02:22PM 15 Mr. Chanthalangsy should not be -- his entire life
16 should not be defined by this criminal activity that
17 brought him here before the Court and, as well,
18 considering the fact that he has lots of support not
19 only now but support that will be there when he gets out
02:22PM 20 from the Bureau of Prisons, and the Court does believe
21 that that is important in helping an offender go on to
22 lead an otherwise law-abiding life.

23 The Court also credits as mitigating that
24 Mr. Chanthalangsy came to this country as an immigrant
02:23PM 25 from Laos when he was 3 or 4 years old. The conditions

1 and circumstances were very harsh and that he has
2 overcome much and that he has much to be proud of in how
3 he has succeeded prior to this setback in society here.
4 So all of that is viewed as mitigating.

02:23PM

5 What I think the bottom line here is there are
6 two parts to Mr. Chanthalangsy. He had the part of him
7 that all of his friends, all of his family knew; and
8 then there were his activities on the dark web.

02:24PM

9 In the Court's opinion that I referenced
10 earlier, United States versus Jean, the Court went into
11 quite a bit of detail explaining what it had learned
12 during the course of that case about the dark web and
13 about the origins of the onion router and how that
14 actually started off as an alternative,

02:24PM

15 below-the-surface website. It was actually started by
16 the United States naval service, and it was a government
17 operated, but then after a period of time, it kind of
18 became commandeered; and although there continued to
19 remain legitimate purposes of the dark web, it has been
20 overrun and now, without a doubt, its primary purpose is
21 to allow criminals to engage in criminal activity over
22 the Internet in complete anonymity, and it is a very
23 frightening thing when you realize everything that is
24 available out there.

02:25PM

25 There are literally resources where you can

1 pull up a menu and order whatever drug you want.
2 Whether that be to consume, whether that be to purchase
3 and sell, it is a very scary thing. It is also the
4 primary source where very sick people go to view child
02:25PM 5 pornography, the sort of child pornography that is not
6 perverse enough to view on the surface level, though.

7 So all manner of criminal activity is committed
8 on the dark web, and any actor that is going there and
9 has the sophistication of this Bitcoin technology that
02:25PM 10 was seized from Mr. Chanthalangsy is just kind of
11 amazing in this Court's estimation. How he could be
12 doing that and having that sort of level of
13 sophistication, engaging in this type of criminal
14 conduct and his family, many of whom are here today,
02:26PM 15 just would have no idea of it, the Court finds all of
16 that interesting and amazing and unfortunate.

17 So for all of those reasons, Mr. Osborne, the
18 Court is going to have to deny your motion for a
19 downward variance. However, Mr. Roberts, given that
02:26PM 20 Mr. Chanthalangsy is a first-time offender and given
21 that the guideline range does go up to as high as 97
22 months, the Court is likewise going to deny your motion
23 for an upward variance. The Court believes that the
24 upper end of the guideline range is the best and most
02:27PM 25 appropriate sentence for Mr. Chanthalangsy.

1 Having made that review of the 3553(a) factors,
2 Mr. Chanthalangsy, the Court will impose judgment as
3 follows: Sir, it is the judgment of this Court that you
4 are to be committed to the custody of the United States
02:27PM 5 Bureau of Prisons for a term of 92 months on Count Five
6 of the indictment. The Court will recommend to the
7 Bureau of Prisons that Mr. Chanthalangsy be designated
8 to a facility nearest his family here in Northwest
9 Arkansas.

02:28PM 10 The Court will also make a recommendation to
11 the Bureau of Prisons that at an appropriate point
12 during Mr. Chanthalangsy's stay that he be designated to
13 a Bureau of Prisons facility that offers sex offender
14 treatment treatment, program and treatment. There's
02:28PM 15 kind of a particular point during their stay and
16 depending on how close they are to discharge whenever
17 they do that; but whatever the appropriate point in time
18 is, the Court certainly feels that that would be
19 appropriate.

02:28PM 20 Upon release from imprisonment, the defendant
21 shall be placed on supervised release for a period of 15
22 years. Within 72 hours of release from custody of the
23 Bureau of Prisons, the defendant shall report in person
24 to the probation office in the district to which the
02:29PM 25 defendant is released. While on supervised release, the

1 defendant shall not commit any federal, state, or local
2 crimes. He shall be prohibited from possessing a
3 firearm or other dangerous device. He shall not possess
4 a controlled substance, and he shall comply with the
5 mandatory drug testing provisions and DNA collection
6 provisions found at Title 18 United States Code Section
7 3583(d).

8 The defendant shall comply with all applicable
9 local, state, and federal sex offender registration
10 requirements. The defendant shall further comply with
11 all the standard conditions of supervised release.
12 Those were set forth, sir, in your plea agreement; they
13 will be restated in your judgment and commitment
14 paperwork.

15 In addition, the defendant shall comply with
16 the following special conditions. Number one, if deemed
17 necessary, the defendant shall submit to any means then
18 utilized by the United States Probation Office to track
19 his whereabouts or location at any time. Number two,
20 the defendant shall have no unsupervised contact with
21 minors. Number three, the defendant shall submit his
22 person, residence, place of employment, vehicle, papers,
23 computer, or other electronic communication or data
24 storage devices or media or effects of any related kind
25 to a search to be conducted by the United States

1 Probation Office at any reasonable time and in any
2 reasonable manner based on any reasonable suspicion that
3 a violation of any condition of supervised release might
4 thereby be disclosed.

02:30PM

5 Number four, except for purposes of employment,
6 the defendant shall not possess, use, or have access to
7 a computer or any other type of electronic device that
8 has Internet or photographic storage capabilities
9 without the prior and advance notice and approval of the
10 United States Probation Office.

02:31PM

11 Reasonable requests by the defendant for such
12 approval ordinarily should not be denied, provided that
13 the defendant allows the U.S. probation office to
14 install Internet monitoring software, that the defendant
15 pays for that software, and that the defendant
16 additionally submits to random searches of his computers
17 and electronic devices and peripherals by the probation
18 office.

02:31PM

19 Number five, the defendant shall submit to
20 inpatient or outpatient mental health evaluation,
21 counseling, testing and/or treatment, all with an
22 emphasis on sex offender treatment as may be deemed
23 necessary and as directed by the United States Probation
24 Office.

02:31PM

02:31PM

25 With regard to restitution, the Court has

1 reviewed the restitution claims of the victims that have
2 been submitted by their attorneys. Restitution is
3 mandatory in these types of cases. The Court believes
4 that in determining an appropriate amount for
5 restitution, that while that is often difficult to
6 ascertain, the Court finds that here the parties have
7 agreed that restitution in the amount of \$1,000 per
8 victim would be appropriate; and based on the Court's
9 review of the materials and information submitted by the
10 victims' attorneys, the Court believes that that amount
11 of restitution is reasonable and so the Court will award
12 restitution to each of the seven victims identified in
13 the presentence report. That's \$1,000 each for the
14 seven victims. In arriving at that decision, the Court
15 has taken into account the Paroline factors.

16 With regard to a fine, and in recognition of
17 the restitution obligation here, the Court finds that
18 the defendant does not have the ability to pay a
19 guideline range fine, and the Court would prefer that
20 monetary obligations be paid in the form of restitution
21 anyway, so no fine is going to be imposed.

22 A special assessment in the sum of \$100 is
23 required and that will be assessed. The \$5,000 special
24 assessment under Title 18 U.S. Code Section 3014 is
25 mandatory, but here the Court finds that the defendant

1 is indigent and so that assessment will not be imposed.

2 So, sir, you have a total of \$7100 worth of
3 financial obligations. Those are technically due and
4 payable immediately; but to the extent that you cannot
02:33PM 5 afford to make payment in full up front, then you are
6 required to make payments as follows: If not paid
7 immediately, any unpaid financial penalties shall be
8 paid by the defendant during his term of imprisonment at
9 a rate of up to 50 percent of the defendant's available
02:34PM 10 funds, in accordance with the Bureau of Prisons Inmate
11 Financial Responsibility Program.

12 During any period of residential reentry
13 placement, those payments shall be equal to 10 percent
14 of the defendant's gross monthly income. Then the
02:34PM 15 payment of any remaining balance shall become a
16 condition of supervised release and shall be paid in
17 monthly installments of \$250, or 15 percent of the
18 defendant's net monthly household income, whichever is
19 greater, with the entire balance to be paid in full not
02:34PM 20 later than one month prior to the end of the period of
21 supervised release.

22 Mr. Osborne, are you aware of any legal reason
23 why the sentence should not be imposed as stated?

24 MR. OSBORNE: No, your Honor.

02:35PM 25 THE COURT: Mr. Roberts?

1 MR. ROBERTS: No, your Honor. Thank the Court
2 for accepting our agreement.

3 THE COURT: That's fine.

4 Very well. The sentence will be imposed as
02:35PM 5 stated. Mr. Roberts, what about the remaining counts of
6 the indictment?

7 MR. ROBERTS: The government would move to
8 dismiss the remaining counts, your Honor.

9 THE COURT: All right. That motion will be
02:35PM 10 granted. Counts, I believe it's One, Two, Three, and
11 Four will be dismissed.

12 The Court has previously entered a preliminary
13 order of forfeiture that relates to various
14 electronic -- I'm not sure how to characterize these.
02:35PM 15 They are stated in the preliminary order and the final
16 order involves the computers and access to the Internet
17 in terms of using the Bitcoin currency. Those devices
18 are the subject of the preliminary forfeiture. The
19 Court finds the form of the final order of forfeiture to
02:36PM 20 be appropriate and that all the prerequisites to the
21 entry of this order have been met and, therefore, the
22 Court will enter the final order at this time and ask
23 the clerk to publish it to the docket.

24 Mr. Chanthalangsy, the last thing that I need
02:36PM 25 to cover with you are your appeal rights. You do have

1 the right to appeal your underlying conviction in this
2 case but really only on the fairly narrow grounds where
3 you might contend that your guilty plea was somehow
4 involuntary or the byproduct of a fundamental defect in
5 the proceedings. You do, however, obviously have the
6 right to appeal the sentence that the Court just
7 imposed. The real takeaway message for you is that
8 regardless of why or on what basis you may seek to
9 appeal, there is a time limit for doing so. The time
10 limit is 14 days. That begins to run on the date that
11 the Court files the judgment in your case to the docket.

12 There's a filing fee that goes along with that,
13 but the Court can waive the filing fee if you cannot
14 afford to pay it. You also have the right to be
15 represented by counsel on appeal, and if you cannot
16 afford to retain an attorney for that purpose, the Court
17 will appoint an attorney to represent you on appeal.

18 Now, I know that Mr. Osborne will visit with
19 you further about appeal issues, but I want to make sure
20 that before you leave here today that you at least
21 understand your basic appeal rights as I've just
22 explained them. Do you?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Very well. Upon
25 conclusion of this hearing, Mr. Chanthalangsy will be

1 remanded to the custody of the United States Marshals
2 Service pending designation and transfer to Bureau of
3 Prisons. Is there anything further today from the
4 government?

02:37PM

5 MR. ROBERTS: No, your Honor. Thank you.

6 THE COURT: Mr. Osborne?

7 MR. OSBORNE: No, your Honor.

8 THE COURT: All right. We're adjourned. Thank
9 you.

02:38PM

10 (Proceedings adjourned at 2:37 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 I, Dana Hayden, Federal Official Realtime Court
4 Reporter, in and for the United States District Court
5 for the Western District of Arkansas, do hereby certify
6 that pursuant to Section 753, Title 28, United States
7 Code that the foregoing is a true and correct transcript
8 of the stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page
10 format is in conformance with the regulations of the
11 Judicial Conference of the United States.

12 Dated this 16th day of February 2018.

13
14
15
16 *Dana Hayden*

17 Dana Hayden, CCR, RMR, CRR
18 Federal Official Court Reporter
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